



**CALIFORNIA ENVIRONMENTAL
PROTECTION AGENCY**

CAL/EPA ENFORCEMENT PROGRAM UPDATE

**Report on Actions Taken in 2010 to Implement
Government Code Section 12812.2**

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CAL/EPA ENFORCEMENT PROGRAM UPDATE
A Report on Actions Taken in 2010
To Implement Government Code Section 12812.2

Government Code section 12812.2(a) gives the California Environmental Protection Agency (Cal/EPA) Deputy Secretary for Law Enforcement and Counsel the responsibility and authority to do all of the following:

- Develop a program to ensure that Cal/EPA, its entities, and local government take consistent, effective, and coordinated enforcement actions. The program shall include training of inspection personnel to ensure consistent, effective, and coordinated enforcement.
- Establish a cross media enforcement unit to assist Cal/EPA, its entities, and local government to investigate and prepare matters for enforcement action.
- Refer violations of environmental law or regulation to prosecutors such as the U.S. Attorney, Attorney General, or District Attorneys.

As required by 12812.2(c), this report provides an update on actions taken during 2010 to implement this section. Cal/EPA's program to ensure consistent, effective, and coordinated enforcement actions has several components:

- 1) Targeted data improvement
- 2) Enforcement training for regulators, investigators and prosecutors
- 3) Support for the Environmental Circuit Prosecutor Project to address the need for prosecutorial resources in rural counties
- 4) Administration of the Environmental Enforcement and Training Act
- 5) Supporting environmental enforcement task forces to facilitate communication between regulators and prosecutors and to coordinate cross media investigations
- 6) Coordinating assistance on investigation and enforcement actions
- 7) Providing assistance on case coordination and referral
- 8) Improving transparency by production of an annual Cal/EPA Report on Enforcement

Each of these components is described below.

1. Targeted data improvement

All regulated businesses and local governments are required to submit their Unified Program Agencies (CUPAs) regulatory reports electronically by 2013. This includes facility data regarding hazardous material regulatory activities, chemical inventories, underground and aboveground storage tanks, and hazardous waste generation. This also includes CUPA data such as inspections and enforcement actions. The California Environmental Reporting System (CERS), a statewide web-based system to support CUPAs in electronically collecting and reporting various hazardous materials-related data, went on line in late 2009 and had several improvements made in 2010. CERS also supports electronic data exchange among regulated businesses, local governments, and U.S. Environmental Protection Agency (EPA). For more information, see the Unified Program section of the Cal/EPA Enforcement Report for 2010 at <http://www.calepa.ca.gov/CUPA/>.

2. Enforcement Training

One crucial role Cal/EPA plays in California's diverse and decentralized network of enforcement is coordination and support of training of enforcement personnel. Environmental laws and regulations are very technical and require special expertise to enforce. Basic and continuing education for environmental regulatory professionals is key. Enforcement requires additional skill sets, such as cross media violations awareness, report writing, investigation, and case development.

Cal/EPA coordinates enforcement training with the California District Attorneys Association, the California Hazardous Materials Investigators Association, the Western States Project (a U.S. EPA funded training entity) and the Peace Officers Standards Training Commission (POST). Enforcement training information is on the web at: <http://www.calepa.ca.gov/Enforcement/Training>.

The Cal/EPA Environmental Enforcement Training Team ("Team") is chaired by the Assistant General Counsel for Enforcement from the Office of the Secretary and consists of one representative each from the Department of Toxic Substances Control, the Air Resources Board, the State Water Resources Control Board and the Department of Pesticide Regulation. In 2010, the focus of the Team's activities were the Cal/EPA Basic Inspector Academy and the Cal/EPA "One Day" Enforcement Training.

The Cal/EPA Basic Inspector Academy (BIA)

The BIA provides baseline knowledge of environmental enforcement and works in conjunction with existing program specific training to prepare state and local environmental regulatory staff to conduct efficient and professional inspections. Training includes overviews of environmental regulatory programs. Students learn to recognize possible violations in other programs and to work with their partner agencies. Four hours of this training are available online at

www.calepa.ca.gov/enforcement. The complete Academy course includes both the online module and 4 days of classroom training. The classroom sessions include a simulated inspection, report writing, case review by prosecutors and mock testimony. In 2010, BIA was given at nine locations around the state and 280 students completed the course.

The BIA is certified for continuing education by the Department of Pesticide Regulation. Accreditation for Registered Environmental Health Specialists and by the California Water Environmental Association are pending. BIA is certified for ½ unit of college credit. Work has commenced on a contract with the Public Safety Training Consortium that would provide approximately \$50 to Cal/EPA for each student who receives college credit. Approval of this contract is pending. When the contract is in place, the funds would be used to pay for equipment and material costs.

Cal/EPA “One Day” Enforcement Training

This course is given by the Cal/EPA Enforcement Training Team in conjunction with local investigators and prosecutors and is designed to help regulatory and enforcement personnel improve their skills in conducting effective and professional environmental inspections and investigations. The course is also an opportunity for state, federal and local regulators and investigators to meet with other professionals in their local area, providing an opportunity for both horizontal (cross program) and vertical (regulator to prosecutor) networking. Six “One Day” courses were given at various locations around the state and 185 students attended.

The Cal/EPA Environmental Enforcement Symposium

This event was not held in 2009 or 2010.

Environmental Enforcement Training Coordination Forum

The mission of this Forum is to coordinate, consolidate, and improve consistency of environmental enforcement training. Forum members consist of CUPA Forum Board, California Hazardous Materials Investigators Association, Cal/EPA, Western States Project, EPA National Environmental Training Institute, California District Attorney Association, California State Parks, Peace Officers Standards Training Commission, and California Specialized Training Institute (part of Cal/EMA).

The Western States Project

The Cal/EPA Assistant General Counsel for Enforcement is a state representative to the Western States Project; a U.S. EPA-funded non-profit organization that provides environmental enforcement resources, networking and training to the western United States. For more information, see <http://www.regionalassociations.org/>.

3. The Environmental Circuit Prosecutor Project

The Environmental Circuit Prosecutor Project (ECCP) is a cooperative project of the Cal/EPA and the California District Attorneys Association as provided for in Penal Code section 14309. The Project fills the gap in the enforcement of environmental laws in California's small counties by providing environmental prosecutors to District Attorneys in rural areas.

In 2010, the ECCP continued to have diminished monetary support and handled fewer civil and criminal environmental cases. The decline in cases accepted by this project is largely attributable to unstable funding. Cal/EPA's annual \$300,000 contract supporting the project was terminated in 2006 and has not been renewed since.

Environmental Circuit Prosecutor Project

Year	# of Prosecutors	Cases Opened	Cases Closed	Fines / costs/SEPs	Jail Time	Probation
2005	6	222	175	\$3,859,866	2 years and 100 days	11 years
2006	5	176	141	\$1,016,626	900 days	9 years
2007	4	173	68	\$1,205,470	80 days	27 years
2008	4	50	39	\$6,964,400	0 days	8.5 years
2009	3	26	38	\$503,295	20 days	21 years
2010	3	18	16	\$1,320,054*	Not reported	Not reported

*This figure does not include the case People v. Wal-Mart, which was a multi jurisdictional civil case.

For more information on the Environmental Circuit Prosecutor Project, see <http://www.calepa.ca.gov/Enforcement/CircuitPros/>.

4. The Environmental Enforcement and Training Act (Penal Code Section 14300)

The Environmental Enforcement and Training Act (Act) provides a means to supplement funding for environmental enforcement and training. The Act provides a method for the distribution of grant funds for enforcement, enforcement training, and the Environmental Circuit Prosecutor Project. Funding for environmental enforcement and training comes from money designated in civil or administrative judgments in environmental enforcement cases and is placed in the Environmental Enforcement and Training Act Account (Account) created by the Act. These

contributions are often referred to as Supplemental Environmental Projects or “SEPs.” No General Fund money is used in the Account. Cal/EPA manages the Account and issues annual grants.

The lowest amount of grant funds distributed from the Account occurred in 2010 (see chart below). The sources of funds were contributions directed to the fund in enforcement cases brought by the Department of Toxic Substances Control and local District Attorneys.

Year	Penal Code §14300 Funding
2006	\$654,081
2007	\$503,562
2008	\$138,260
2009	\$305,262
2010	\$70,149

Each year these funds are apportioned as required by statute:

- 25 percent to the Environmental Circuit Prosecutor Project
- 25 percent to the California District Attorneys Association for enforcement training for investigators, regulators and prosecutors
- 25 percent (up to \$100,000) to the Commission on Peace Officer Standards and Training (POST) for environmental investigation training
- Remainder to Cal/EPA to award training and enforcement grants.

In 2010, 25 per cent of the account was \$17,537. The Cal/EPA portion in the Account (\$17,537) was awarded to the California District Attorneys Association for additional funds to support the Environmental Circuit Prosecutor Project.

For more information on the Penal Code section 14300 Account, see <http://www.calepa.ca.gov/Enforcement/Grants/14300.htm>.

5. Supporting Environmental Enforcement Task Forces

Since its inception, Cal/EPA has encouraged the creation and support of environmental enforcement task forces dedicated to the deterrence, detection, investigation, and prosecution of environmental violations. These task forces are comprised of participating federal, state, and local agencies with enforcement authority. The members of these task forces generally include local, state or federal prosecutors, law enforcement agencies (Sheriff, Fish and Game wardens, California Highway Patrol, Federal Bureau of Investigation, U.S. EPA Criminal Investigation Division, etc.), investigators and technical experts from Cal/EPA’s Boards and Departments, and local environmental agencies (local hazardous material control programs, air pollution control districts, sanitation departments, etc.). Task forces facilitate the exchange of resources and intelligence between different law enforcement and regulatory entities. These cooperative partnerships allow task

force member agencies to pursue investigations that they would not be able to complete alone.

In the past, the Cal/EPA's Department of Toxic Substances Control (DTSC) had staff whose primary duties were to support environmental enforcement task forces. These positions were created to offer multimedia, multi program support to local enforcement efforts. They worked closely with local, state, and federal environmental regulatory agencies, investigators, and prosecutors to coordinate environmental enforcement. In the past 3 years, these DTSC task force support resources were redirected to other priorities greatly reducing state participation and support available to local environmental enforcement task forces.

Many counties in California are covered by a local environmental enforcement task force. In addition, there are some regional and/or single subject task forces. For more information, see: <http://www.calepa.ca.gov/Enforcement/TaskForce/>.

The Cal/EPA Assistant General Counsel for Enforcement chairs the State Environmental Enforcement Task Force. Attendees include representatives from enforcement programs within Cal/EPA Boards and Departments, enforcement liaison attorneys from the Cal/EPA Boards and Departments, the Department of Fish and Game, the California District Attorneys Association, Assistant U.S. Attorneys, Deputy Attorneys General, and the U.S. EPA Criminal Investigation Division. The purpose of the task force is to go over current major cases, discuss enforcement program administrative issues (new regulations, legislation, resources), address needs for joint investigations, enforcement training, and enforcement projects including the Environmental Circuit Prosecutor Project, and discuss issues affecting local agency partners.

The Cal/EPA Assistant General Counsel for Enforcement participates in the Border Environmental Enforcement Task Force, a group of federal, state, and local officials that meet quarterly in the Mexico/California border area to discuss border-related environmental enforcement issues; and the Border 2012 California/Baja Waste and Enforcement Task Force, which includes Mexican environmental enforcement officials.

6. Cal/EPA Assistance on Investigation and Enforcement Actions

Cal/EPA has institutionalized cross media, cross program investigation and enforcement. Cal/EPA training is brought to reality by the work of the task forces described above, where inspectors and others can request assistance with enforcement investigations.

Pursuant to a Memorandum of Understanding between the Air Resources Board and Cal/EPA, the Strategic Enforcement Investigations (SEI) unit at Air Resources Board has been designated as Cal/EPA's cross media enforcement unit in accordance with Government Code section 12812.2. SEI has surveillance equipment and its staff is

utilized to assist state, regional and local agencies in investigations of environmental crimes. Video evidence is a highly effective tool in environmental crime enforcement and its use by state and local agencies continues to grow.

Other Cal/EPA Boards, Departments, and local agency partners provide enforcement and case development assistance on a case-by-case basis.

7. Case Coordination and Referral

During 2010, Cal/EPA continued to assist and coordinate regulators, investigators, and prosecutors in investigations of violations of environmental laws. Cal/EPA works with US EPA Region 9 enforcement officials to coordinate joint state and federal investigations and prosecutions.

There has been an increase in the number of multi-county and statewide civil cases brought to enforce environmental laws. These cases require close cooperation between the regulators in various jurisdictions and the local and state prosecutors. Cal/EPA has assisted this effort by providing training on this subject at the annual CUPA Training Conference and other venues. Complaints and judgments from multi-county and state actions are posted on Cal/EPA's web pages at <http://www.calepa.ca.gov/Enforcement/Orders/>.

8. Improving Transparency by Production of an Annual Cal/EPA Enforcement Report

Cal/EPA, in cooperation with its Boards and Departments, produced an annual Report on Enforcement for 2009 that is available on the web at <http://www.calepa.ca.gov/Enforcement/Publications/2009/default.htm>.